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ABSTRACT

Designed as part of a 40-hour course in medical law and economics, this lesson plan was developed to enable students to: (1) define and give examples of the tort of negligence in the medical profession; (2) distinguish between and give examples of personal and professional negligence; (3) be able to identify, for a given situation, the three major points a plaintiff in a professional negligence suit will have to prove; (4) apply the doctrine of "respondeat superior" to the physician-employer/medical assistant relationship and translate its importance into the medical office setting; and (5) explain how to reduce the likelihood of rendering an employer or oneself liable. The lesson plan begins with information on the course for which the 50-minute lesson was designed; equipment and audiovisual aids needed; requirements for student materials; course objectives; bibliographic references; and special remarks for the instructor. Next, a step-by-step outline of the instructor's presentation is provided in a format indicating the length of time and the equipment or other aids necessary for each step of the lesson. Transparency masters are included. (PAA)

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INTRODUCTION TO THE TORT OF NEGLIGENCE
AS IT PERTAINS TO THE MEDICAL OFFICE

Medical Law and Economics,
Lesson Plan No. 3

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LESSON PLAN

LESSON PLAN NO. 3		INSTITUTION / AGENCY: Kapiolani Community College		PAGE <u>1</u> OF <u>17</u> PAGES	
COURSE OF INSTRUCTION AND COURSE NUMBER: Medical Law and Economics MEDAS 31		TOTAL HOURS: 40 Hours		LESSON TITLE: Introduction to the Tort of Negligence as it Pertains to the Medical Office	
DAY AND DATE OF INSTRUCTION: Wednesday, November 12, 1986		HOURS 50 Minutes		PLACE: University of Hawaii, Wist Hall 112	
NO. OF STUDENTS: 25	REHEARSAL: November 10, 1986	INSTRUCTOR AND ASSISTANTS: Joan Young		STUDENT MATERIALS AND DRESS: Pen Notebook Attire as required in the Student Handbook	
REFERENCES: Please refer to Page 2.				EQUIPMENT AND AUDIO-VISUAL AIDS: 1. Overhead projector and screen 2. Blackboard, chalk, and eraser 3. Transparencies a. #1 Your Role b. #2 Negligence c. #3 Some allegations in Actual Claims Filed Against Physicians d. #4 Premises 4. Student handout 5. Recorded tape and taperecorder 6. Extension cord	
OBJECTIVES: Please refer to Page 3.				SPECIAL REMARKS:	

REFERENCES:

1. Law for the Medical Office. The American Association of Medical Assistants. Chicago. 1984. Page 107 to Page 130.
2. Taped interview with Honolulu Attorney, L. Richard Fried. October 15, 1986.
3. Taped interview with Honolulu Physician, Walter K. W. Young. October 17, 1986.
4. Transparencies:
 - a. #1 Your Role
 - b. #2 Negligence
 - c. #3 Some Allegations in Actual Claims Filed Against Physicians
 - d. #4 PremisesMedical Insurance Exchange of California.

Lesson Objectives:

By the end of class, the student should be able to:

1. Define tort and give examples of the tort of negligence.
2. Distinguish between and give examples of personal and professional negligence.
3. If given a situation, be able to identify the three major points a plaintiff in a professional negligence suit will have to prove.
4. Apply the doctrine of respondeat superior to the physician-employer/medical assistant relationship and translate its importance into the medical office setting.
5. Explain how to reduce the likelihood of rendering an employer or self liable.

LESSON PLAN NO. _____

PAGE 4 OF 17 PAGES

PRESENTATION

OUTLINE OF INSTRUCTION	TIME	METHODS OF INSTRUCTION AND AIDS
<u>Pre-discussion:</u> This lesson is an introduction into the tort of negligence as it pertains to the medical office. It is included in a course of medical law and economics that is a part of the Medical Assisting Curriculum. Class will be consistent with that of a second year Medical Assisting Class. Courses of anatomy, pharmacology, introduction to disease, and clinical experience would be completed prior to this course. I. <u>Introduction</u> A. Purpose 1. To focus on the tort of negligence through definition, example, and prevention. B. Reason 1. To better equip and prepare the medical assistant to deal with the legal aspects of working in the health care setting 2. How can I, as a medical assistant, prevent a lawsuit against my place of employment, my doctor, or me? 7	5 min.	Turn on overhead projector Show transparency #1: Your Role Turn off overhead projector 8

OUTLINE OF INSTRUCTION	TIME	METHODS OF INSTRUCTION AND AIDS
C. Objectives By the end of class, the student will be able to: 1. Define tort and give examples of tort of negligence. 2. Distinguish between and give examples of personal and professional negligence. 3. If given a situation, be able to identify the three major points a plaintiff in a professional negligence suit will have to prove. 4. Apply the doctrine of respondeat superior to the physician-employer/medical assistant relationship and translate its importance into the medical office setting. 5. Explain how to reduce the likelihood of rendering an employer or self liable.		
II. <u>Tort of Negligence and Standard of Medical Care</u> Objective #1. Definitions and examples. A. As you will recall from previous lessons, the term tort refers to "a civil wrong for which the wrongdoer is liable to the wronged party for damages." B. Negligence 1. can be the failure to provide the level of care possible, given the status of medical knowledge.	5 min.	List vocabulary on blackboard Cite the example of the pediatrician who did not use the phenylketonuria test and delayed a diagnosis. Turn on overhead projector Show Transparency #2: Negligence

PRESENTATION

OUTLINE OF INSTRUCTION	TIME	METHODS OF INSTRUCTION AND AIDS
2. failure to exercise the care that a prudent person usually exercises C. So then, failing to act with reasonable care constitutes the tort of negligence Objective #2 Lawsuits governed by principles of tort law involve: A. Personal negligence 1. Defendant is held to "reasonable person" standard. B. Professional Negligence 1. Defendant is held to the "reasonable member of the profession" standard. 2. To better understand how complicated this area can become, we need to look at yet another term: Local standard of medical care is a factor looked at in determining the presence of or absence of negligence. a. a physician provides his patient with reasonable care when he treats his patient with the <u>same degree of knowledge, skill, and care</u> that his peers would provide under same or similar circumstances. 11	5 min.	Turn off overhead projector. Cite example of the patient whose eyesight was permanently damaged because of medication prescribed by a doctor who was unaware of side effects. Cite example of error in judgement: Tonsillectomy case in which doctor failed to give adequate instructions and follow-up. Be sure to emphasize those words that are underlined. Cite example of hysterectomy with peritonitis and 6 day delay causing patient's death 12

PRESENTATION

OUTLINE OF INSTRUCTION	TIME	METHODS OF INSTRUCTION AND AIDS
b. Principle is easier to state than to apply 1. It suggest that a standard or routine way of treating all medical problems exists or that good medicine can be provided by a <u>set recipe</u>. Note: Introduction of a prerecorded tape featuring local Civil Liability Attorney, L. Richard Fried answering a question of what he felt were the most common reasons for doctors getting sued for negligence in the medical office setting. This is followed by a response from a local practicing physician, Dr. Walter K.W. Young, who will point out how very difficult it is to treat each patient exactly the same and why doctors must deal with variables. <u>Subsummary:</u> Question: Define a tort. Answer: "A civil wrong for which the wrongdoer is liable to the wronged party for damages." Question: Briefly, define the tort of negligence. Answer: Failing to act with reasonable care. 13	5 min.	Bring out that the lawyer sees black and white situations while the doctor must deal with variables. Play taperecording featuring Mr. Fried and Dr. Young. Be sure all students are able to hear. Call on student, asking the question before stating the name. <u>If there is any hesitancy, review, until all points are clear before going on.</u> 14

OUTLINE OF INSTRUCTION	TIME	METHODS OF INSTRUCTION AND AIDS
2. diagnostic error or delayed diagnosis due to negligence is not sufficient cause for a lawsuit unless plaintiff can show that error or delay injured the patient. 4. Of interest - plaintiff need not show defendant "guilty beyond a shadow of a doubt" - as in a criminal case. In civil case, the plaintiff's evidence must simply be more convincing to the jury or judge than the defendant's evidence. Question: True or False - The physician's duty to provide a patient with reasonable care is established with the formation of the physician-patient relationship. Answer: True.	15 min.	Cite example of fractured cervical vertebrae found two months late. Treatment same. Delay did not worsen the condition.
IV. <u>Doctrine of Respondeat Superior (let the master answer)</u> Objective #4 A. Under this doctrine, "a physician is responsible for the negligence of assistants/agents/employees when the negligence occurs within the course and scope of the assistants/agents/employees duties." B. Go over areas in which patients have filed claims against physicians and have students tell how they might prevent such from happening:		Call on student to answer and then be sure to repeat for all to hear. If answer seems unclear, go back over important points. Turn on overhead projector Reshow transparency #1: Your Role Show transparency #3: Allegations in Actual Claims Filed Against Physicians

PRESENTATION

OUTLINE OF INSTRUCTION	TIME	METHODS OF INSTRUCTION AND AI
1. physician abandoned patient 2. physician over-prescribed medication 3. defamation of character 4. failure to obtain informed consent 5. patient fell off examining table 6. inappropriate billing 7. patient tripped in the waiting room 8. mistreatment of elderly patients 9. improper examination of minor (female) 10. physician failed to keep appointment C. The liability of the physician for the negligence of an employee does not immunize that employee from liability 1. the law holds everyone liable for his or her own negligence. *** Insurance is available for this. 2. the injured party may sue both the doctor and the assistant. 3. the employer may sue the employee to recover the employee-caused damages the employer had to pay!! D. Physicians in private practice have repeatedly been found liable under the doctrine of respondeat superior for an employee's negligence that occurs during the course and scope of individual's employment 19		Call on more vocal student to get discussion started. Encourage use of learned principles to answer the situations. Impress on the students the need in these times for this type of insurance Cite example of nurse who gave a hypodermic injection and left the needle in the patient's arm. 20

OUTLINE OF INSTRUCTION	TIME	METHODS OF INSTRUCTION AND AIDS
D. To reduce the likelihood of rendering an employer liable as well as to protect her own reputation and career, the medical assistant should: 1. have a very clear understanding of her <u>role</u> (job) responsibilities and duties. 2. never attempt to perform any clinical or medical procedure for which she has not had adequate training. 3. diligently and carefully perform her duties. If a mistake is made, bring it to the physician's attention immediately. E. Go over how the medical assistant can play a significant role in being the watch dog in the office setting by observing the following situations and taking action: 1. try to avoid leaving patients alone. 2. periodic furniture and equipment safety checks. 3. immediate reporting of faulty equipment or accident 4. toxic substances out of reach; labeled clearly 5. prescriptions pads out of reach 6. one person to watch patient properly 7. be aware of fire exits Question: Briefly describe the doctrine of respondeat superior. Answer: Legal term used to express the liability of the employer for negligence of the employee. 21		Turn on overhead projector Show transparency #4: Premises. Encourage students to look at affiliate offices for these situations. Call on student. If this doctrine is not clearly understood, repeat major points covered. 22

OUTLINE OF INSTRUCTION	TIME	METHODS OF INSTRUCTION AND AIDS
Question: Under what circumstances is a physician liable for the negligence of a medical assistant? Answer: When the negligence occurs within the course and scope of the medical assistant's duties. V. <u>Summary</u> A. Failure to act with reasonable care constitutes the tort of negligence - a civil wrong for which the wrong-doer is liable for damages. B. A physician provides his patient with reasonable care when he treats the patient with the same degree of knowledge, skill, and care that his peers would provide under same or similar circumstances. 1. We saw that this was easier to state than to apply. C. In addition to being liable for his own negligence, a physician may be responsible for the negligence of others D. Although the physician may be liable for her negligence, the medical assistant may also be held liable and should work to protect her reputation and her career. 23	5 min.	Again, call on student and clarify any missed points of importance. 24

Introduction to the Tort of Negligence

Lecture Agenda/Outline

- I. Introduction
 - A. Purpose
 - B. Reason
 - C. Objectives
- II. Tort of Negligence and Standard of Medical Care
 - Objective #1 Definitions and Examples
 - Objective #2 Lawsuits Governed by Principles of Tort Law
- III. Professional Negligence Suits
 - Objective #3 Criteria
- IV. Doctrine of Respondeat Superior
- V. Summary

YOUR ROLE

Patient



Physician



Office Staff



NEGLIGENCE:

- 1) Failure to provide the level of care possible, given the status of medical knowledge
- 2) Failure to exercise the care that a prudent person usually exercises.

Some Allegations in Actual Claims Filed Against Physicians

Physician abandoned patient

Physician over-prescribed medication

Defamation of character

Failure to obtain informed consent

Patient fell off examining table

Inappropriate billing

Patient tripped in waiting room

Mistreatment of elderly patients

Improper examination of minor (female)

Physician failed to keep appointment

PREMISES

- ➡ Try to avoid leaving patients alone
(especially children & elderly patients)
- ➡ Periodic furniture and equipment safety checks
- ➡ Immediate reporting of faulty equipment or accident
- ➡ Toxic substances out of reach; labeled clearly
- ➡ Prescription pads out of reach
- ➡ One person to watch patient property
- ➡ Be aware of fire exits

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